IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5005 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VADODARA JILLA KHADI GRAMODYOGSAHAKARI MANDLI LTD

Versus

MADHUBEN DESAIBHAI MALI

Appearance:

MR BS PATEL for Petitioner

MR SHAJI VIDYADHARAN for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 18/08/2000

ORAL JUDGEMENT

#. Rule. Mr.Shaji Vidhyadharan, learned advocate for the respondent waives service of rule.

#. The employer Co-Operative Society by way of this petition seeks to challenge the order of the Labour Court, Vadodara made in Recovery Application No.1787/92

whereby the petitioner is ordered to pay the amount due to the respondent within 30 days with cost of Rs.1,000/and interest on the due amount at the rate of 18% with effect from 1.6.1999.

#. The learned advocate Mr.B.S.Patel, appearing for the petitioner submitted that the respondent was serving under the petitioner as a part time sweeper and she was paid Rs.20/- as daily wages. It appears that the respondent has claimed wages at the rate of Rs.30/- per day as being the minimum wages applicable to her and considering the services of 25 months she has claimed totally Rs.11,250/-.

#. The Learned Judge of the Labour Court has, in the impugned order briefly discussed the evidence led by the petitioner and accepted the deposition on their behalf to the effect that the respondent was paid wages at the rate of Rs.20/- per day. It is also found to be proved that the respondent was serving as a permanent sweeper. Accepting the respondent's say that the wages due under the Minimum Wages Act would be Rs.30/- per day, the amount due on that count is ordered to be paid under the impugned order.

#. The proceedings as above, before the Labour Court have been taken up under Sec.33(c) of the Industrial Dispute Act which reads as under :-

"33-C Recovery of money due from an employer.-
(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of (Chapter V-A or Chapter V-B), the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue:

Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer:

Provided further that any such application may be entertained after the expiry of the said period of one year, if the

appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government (within a period not exceeding three months)

(Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit)

(3) For the purposes of computing the money value of a benefit, the Labour Court may, if it so thinks fit, appoint a commissioner who shall, after taking such evidence as may be necessary, submit a report to the Labour Court and the Labour Court shall determine the amount after considering the report of the commissioner and other circumstances of the case.

(4) The decision of the Labour Court shall be forwarded by it to the appropriate Government and any amount found due by the Labour Court may be recovered in the manner provided for in sub-section(1).

(5) Where workmen employed under the same employer are entitled to receive from him any money or any benefit capable of being computed in terms of money, them, subject to such rules as may be made in this behalf, a single application for the recovery of the amount due may be made in behalf of or in respect of any number of such workmen."

#. Accordingly, it follows that the Labour Court was required to calculate and determine the amount due to the respondent. As the amount actually paid to the respondent is proved on record, the amount due to the petitioner under the provisions of Minimum Wages Act as wages and special allowance payable from time to time had

to be ascertained and the exact amount of difference ought to have been ordered to be paid by the petitioner to the respondent. Unfortunately, such exercise is not undertaken and a vague order is made, which cannot be sustained.

#. In the circumstances and for the reasons discussed above, the petition is partly allowed and the impugned order is set aside with a direction to the Labour Court, Vadodara to reassess and determine the exact amount due to the respondent and make necessary orders for payment of the same. This exercise shall be carried out and completed preferably within six months from today and parties shall be at liberty to lead any additional evidence as may be required. However, it is agreed and understood among the parties that they shall not unnecessarily delay the proceeding and shall not seek any unnecessary adjournment. The petition is accordingly allowed. Rule is made absolute in terms as above with no order as to costs.

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